

National Rural Letter Carriers Association (United States Postal Service, Slidell, Louisiana) and Jackie Donney. Case 15-CB-2763(P)

16 August 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
HUNTER AND DENNIS

On 30 May 1984 Administrative Law Judge Lawrence W. Cullen issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief in support of the decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

¹ The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

DECISION

STATEMENT OF THE CASE

LAWRENCE W. CULLEN, Administrative Law Judge. This case was heard by me at Slidell, Louisiana, on October 3 and 4, and November 29 and 30, 1983. The hearing was held pursuant to a complaint issued by the Regional Director for Region 15 of the National Labor Relations Board (the Board) on August 16, 1983, and is based on an amended charge filed on July 18, 1983. The complaint alleges that the National Rural Letter Carriers Association (Respondent or Union) violated Section 8(b)(1)(A) of the National Labor Relations Act (the Act) within the meaning of the Postal Reorganization Act (the PRA) by, since about June 20, 1983, failing to represent Jackie Donney, a union member, in a grievance protesting her discharge by the United States Postal Service, Slidell, Louisiana (the Employer) because of personal animus by Shirley Champagne, the Local Union steward, toward Donney, and that the Union has thereby "failed to represent Donney in her grievance for reasons which are unfair, arbitrary, invidious, and a breach of the fiduciary duty owed the employees it represents." The complaint is joined by the answer of Respondent wherein it

denies the commission of the alleged violation of the Act.

On the entire record in this proceeding including my observation of the witnesses who testified and after due consideration of the positions of the parties, and closing statement of the General Counsel and the brief filed by Respondent, I make the following

FINDINGS OF FACT AND ANALYSIS¹

I. JURISDICTION

The complaint alleges, the answer admits, and I find that the Board has jurisdiction over this matter which involves a United States Post Office located in Slidell, Louisiana, as the United States Postal Service (USPS) is now, and has at all times material herein, been subject to the jurisdiction of the Board in unfair labor practices arising under the Act pursuant to Section 1209(a) of the PRA.

II. THE LABOR ORGANIZATION

The complaint alleges, the answer admits, and I find, that Respondent, National Rural Letter Carriers Association, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

The Charging Party was employed as a Rural Carrier Relief employee (RCR) a part-time relief employee classification, at the United States Post Office in Slidell, Louisiana, until May 28, 1983, when she was terminated by Postmaster Frank J. Gerald, the chief administrative officer of that facility, for having had three industrial accidents. The labor agreement and USPS guidelines set out the terms of employment of the RCR including the provisions that RCR's do not have access to the grievance procedure with respect to disciplinary action taken against them. In addition, the labor agreement contains a nondiscrimination clause prohibiting discrimination against employees "because of race, color, creed, religion, national origin, sex, age, or marital status or because of a physical handicap." This clause also provides that "grievances arising under this article may be filed at step 2 of the grievance procedure unless filed directly at the national level."

Donney had initially been employed by the U.S. Postal Service as an RCR following her discussion of employment with Shirley Champagne, a rural letter carrier, who delivered mail to Donney's home. According to the un rebutted testimony of Champagne, which I credit, Donney had inquired of Champagne concerning her employment and Champagne had given her information which assisted Donney in learning the duties of a letter carrier and gave her advice on a voluntary basis. In September 1982, Donney and Champagne's relationship deteriorated, and Donney ceased speaking to Champagne.

¹ The following includes a composite of the testimony of the witnesses at the hearing, which testimony is hereby credited except insofar as specific credibility resolutions are hereinafter made.

In December 1982, Donney received two letters of warning by the Employer, one of which was for her failure to carry adequate stock of stamps which are sold to customers along the mail route and another for calling in ill without providing adequate documentation by a doctor concerning her illness.

Donney telephoned Union State Steward Jimmy Richardson shortly after her termination on May 28, 1983, and reached him on a second call the Monday following her discharge. Donney testified that she read the termination notice over the telephone to Richardson and asked if he would help her, and he told her he would file a grievance on her behalf within a week. She inquired of him what the basis of the grievance would be and he replied that it would be based on discrimination and possibly a few other grounds, but he would need to review the labor agreement. Richardson did not inquire of her for the names of any witnesses to the accidents. Donney testified that a week later she learned that Champagne had filed a grievance on her behalf. Donney had not been contacted with respect to any grievance meetings nor had she and Champagne spoken with respect to the grievance at the time of hearing. Donney contended at the hearing that she had witnesses who had observed her accident. Donney initially learned that Champagne had filed a grievance on her behalf by her inquiry of Postmaster Gerald whether he had answered her grievance by Richardson to which Gerald replied that Champagne rather than Richardson had filed a grievance on her behalf, and that he had denied the grievance "because, he felt that I had no rights, whatsoever." Neither Champagne nor Richardson contacted her to tell her the grievance had been denied by Gerald. In early June 1983, Donney attended a union meeting and spoke to Richardson who told her he had filed the grievance and that it looked good and she had a "fifty-fifty shot."

Jimmy Richardson, the state steward, testified that grievances are initiated at step 1 which is an oral discussion between the grievant and the immediate supervisor. If no decision agreeable to the grievant is reached at step 1, the grievance is processed at step 2(a) by the local steward who writes up the grievances and furnishes a copy to the postmaster. After the postmaster receives the grievance, he has 7 days to set a meeting with the steward and after the meeting the postmaster has 10 days to issue a written decision. If the grievance is denied at step 2(a), the steward prepares, files, and sends it to Richardson, the state steward, and Richardson reviews the file and he may appeal the grievance to step 2(b) which is commonly referred to as a disciplinary case. After step 2(b), if a denial is issued, Richardson prepares a file and sends it to the regional representative who reviews it and makes a decision whether to appeal the decision to regional arbitration. If it is a disciplinary case, the labor agreement provides that witnesses may be called at step 2(a) of the grievance procedure if the parties are each in agreement to do so.

Richardson testified that in late May 1983 Donney telephoned and informed him she had been terminated because she had had three accidents. He told her he would check into filing a grievance on her behalf based on discrimination. He also discussed the matter with

Champagne at the end of a union meeting in early June 1983, and asked her to process a grievance under article 2 (the nondiscrimination clause of the labor agreement). He also talked to Donney and her husband at the time and told her (Donney) that he "thought there was a good chance of getting it reversed, that she had basically a fifty/fifty chance, but not to get her hopes up, that I couldn't guarantee her anything, but that we would process the grievance on her behalf." He also told her that normally the post office would not do this to another classification of employees. He was aware that Donney and Champagne had not gotten along in the past, but did not tell Donney that Champagne would process the grievance nor did he tell Donney that he personally would process the grievance.

He had subsequent telephone conversations with Champagne concerning the grievance later in June when he instructed her how to prepare the grievance form and to file under article 2 of the labor agreement (the nondiscrimination clause). During one conversation with Champagne, he told Champagne that "I was sure Mr. Gerald was going to deny the grievance, just take the denial and ship it up to me." There was no discussion between himself and Champagne whether witnesses should be presented at step 2(a) of the grievance procedure. Champagne told him that the postmaster had told her there were some items concerning Donney he did not want to bring up if he did not have to do so. In that conversation, he told Champagne to bring the file (Donney's grievance) to the state convention which took place during the first full weekend of June. At the convention, he reviewed the file and told Champagne that if this were all the postmaster was relying on, he thought chances of prevailing on the grievance were good. In early July, he had a telephone conversation with Champagne who informed him that Gerald was going to deny the grievance, and he told her to "get the paperwork together, and get it up to me, and I'll take it from here." He acknowledged that he received a call from Donney who told him she was upset as she had learned from Postmaster Gerald that Champagne had processed the grievance on her behalf. He testified that the grievance was in the hands of the Union's regional representative at the time of the hearing. He testified that Donney was an RCR, had no right to have her discharge taken to the grievance procedure but that he utilized the grievance procedure and specifically the nondiscrimination clause to have her case reviewed at a higher level although the facts did not show that the discrimination clause was applicable to her grievance. He testified that in his experience, he has found that disputes are often resolved by having them reviewed by higher postal authorities who are not involved in the matter. He also testified that in his experience there have never been witnesses presented at step 2(a) of the grievance procedure. He discussed the case with higher levels of the employer's management with the district director of the Employer's Delta District on at least two occasions specifically on the ground that the discharge was too severe for the accidents involved. He has also discussed the case on a number of occasions with Steve Smith, the regional representative

for the Union's Southern Region as well as with Dallas Fields, the Union's national director of labor relations, at the state convention whose response was that she had no access to the grievance procedure.

Both Richardson and Smith testified to a series of discussions carried on between them and postal authorities in an attempt to convince them to reinstate Donney; these discussions were primarily carried on by Smith with Jack Cleuwinsky, the then acting district director of employee relations for the Employer. To the date of the hearing, these efforts had been rebuffed by the Employer although at one point settlement had appeared likely until resistance to it by Postmaster Gerald became known by the successor of Cleuwinsky who had been transferred in the interim. Richardson, Smith, and Fields all testified that they had initially concluded that RCRs such as Donney had no access to the grievance procedure with respect to discipline, and that the allegation of discrimination under article 2 of the labor agreement was utilized as a vehicle by the Union in seeking review of the matter at a higher level. Smith testified that no final answer had been received on the matter as of the date of the hearing, but he expected a negative answer and would recommend that the Union not pursue arbitration on the grievance. I credit the testimony of Richardson, Smith, and Fields as set out above.

Following Donney's termination on May 28, 1983, Union Steward Champagne filed the grievance on her behalf on June 13, 1983, at the direction of State Steward Jimmy Richardson following the telephone call by Donney to Richardson informing him of her discharge. Postmaster Gerald told Champagne at one of several discussions in the initial grievance step meeting that there were a number of other items he could have listed as additional reasons for the discharge of Donney but had not done so as he did not want to "crucify" Donney. Under the terms of the labor agreement and as set out in the guidelines, an RCR can be terminated at will although the guidelines provide that "although extensive details are unnecessary, the written notice should set forth the reasons which caused the separation action to be initiated." According to the testimony of Gerald and Champagne, they met on several occasions in the initial stage of the grievance procedure and Gerald asserted that RCRs had no recourse to the grievance procedure, that the discrimination clause under which Champagne subsequently proceeded on behalf of Donney at the direction of State Steward Richardson did not apply to this situation, and that it was these statements with which Champagne concurred with, although, Gerald's comments on the postal service grievance writeups indicated in broader language that Champagne had agreed with his conclusion that the grievance had no merit. I credit their testimony in this regard.

Analysis

The General Counsel contends that Respondent violated Section 8(b)(1)(A) of the Act by reason of a breach of its duty of fair representation by the processing of Charging Party Donney's grievance in a perfunctory fashion at step 2(a) of the grievance procedure because of Champagne's animus toward Donney, thereby preju-

dicing beyond repair the possibility of the Charging Party prevailing on her grievance for reinstatement and contends that any uncertainty with respect to the merits and ultimate outcome of the grievance, but for the alleged discriminatory processing by Respondent, should be resolved in favor of the Charging Party and against Respondent. The General Counsel cites the animus of Champagne toward Donney, Champagne's prior circulation of a petition, which was provided to the postmaster, among the employees disavowing a written communication previously made by Donney to the Union's president, Champagne's prior notification of the postmaster of Donney's alleged inadequacies as an employee, Champagne's alleged failure to investigate the alleged accidents on which the discharges were purportedly based by the postmaster and her failure to communicate with Donney concerning the grievance, and Champagne's agreement with the postmaster that the grievance had no merit as well as a notation on the grievance form itself by Champagne concerning Donney's alleged harassment of Champagne.

Respondent contends that the General Counsel has failed "to show a nexus between the admitted animus between Shirley Champagne and Jackie Donney and any acts or omissions by Shirley Champagne," and assuming arguendo that Champagne failed to adequately represent Donney, this failure was negated by persistent and extraordinary efforts of her superiors within the Union's hierarchy (State Steward Jimmy Richardson and Southern Regional Representative Steve Smith). Further, that the investigative efforts by the Union of Donney's grievance were sufficient, that Champagne represented Donney adequately and "was not required to destroy her effectiveness as a union steward solely for the sake of Ms. Donney," and that Donney bears primary responsibility for her situation as "she provoked her discharge, created the difficulties of union representation of which she complains, and so alienated the employees of the Slidell Post Office that the Association could not win her reinstatement."

After a review of all of the testimony and exhibits and of the positions of the General Counsel and Respondent in this case, I find that the General Counsel has failed to prove a prima facie case of a violation of the Act by Respondent. In making this determination, I have considered the admitted animus between Champagne and Donney and have considered the predischarge conduct of both Champagne and Donney toward each other. It is clear that these two individuals were not on good terms and it is undisputed that Donney has ceased speaking to Champagne in the fall of 1982. It is also undisputed that Donney was not on good terms with the majority of the other employees at the Slidell Post Office. It is also clear that Donney's job performance had been called into question by the manager of the Post Office, and that Donney had been disciplined through the issuance of warnings in addition to the three accidents.

I credit Champagne who testified that the written note on Donney's grievance form, (that this was another example of Donney's harassment of Champagne) was an inadvertent error caused by writing on a carbon on Cham-

pagne's answer to a customer complaint filed by Donney's husband against Champagne for alleged driving on Donney's lawn while delivering mail to them. This is the only logical application for such a note as it is clear that a grievance filed by Champagne on behalf of Donney protesting Donney's discharge in the absence of discussion between Donney and Champagne concerning it could not have been the subject matter of the note concerning alleged harassment of Champagne by Donney. I further credit Champagne's and Postmaster Gerald's version of the discussion between themselves concerning the grievance of Donney at which Champagne indicated to Gerald that she agreed with his position that Donney had no access to the grievance procedure as a Rural Carrier Relief employee with respect to her discharge but that she was processing it to the next stage of the grievance procedure at the direction of the state steward. I have credited the testimony of State Steward Richardson and Southern Regional Representative Smith concerning their efforts with respect to the processing of the grievance of Donney.

Under all the circumstances in this case, I do not find that Champagne's processing of the grievance was deficient so as to give rise to a violation of the Act. While it would have obviously been preferable if Champagne had withdrawn from her role as a steward concerning the processing of this grievance in view of the animus between herself and Donney so as to avoid the appearance of any deficiency in her processing of the grievance, I find nothing in her conduct of the grievance that would warrant a finding of a violation of the Act. Under the circumstances of this case, I do not find her candor and inability to show Gerald that Donney was covered by the grievance procedure with respect to discipline or was discriminated against under article 2 of the labor agreement was violative of the Act. This is particularly so in view of the undisputed conclusion of both the union representatives and Gerald that an RCR had no access to the grievance procedure with respect to discipline in the light of the clear contract language which precludes this. Furthermore, step 2(a), the initial step of the grievance, is frequently attended solely by the stew-

ard, and witnesses are not routinely provided at this stage of the proceeding. Moreover, assuming arguendo that Champagne's conduct at the initial stage of the proceeding was less than adequate, I find that any deficiency was remedied by the efforts of her superiors who made extensive efforts to secure the reinstatement of Donney through settlement of the matter with U.S. Postal management representatives removed from the Slidell Post Office which was the site of the dispute. I thus find that Respondent did not violate Section 8(b)(1)(A) of the Act as I find no evidence that the Union processed this grievance in a perfunctory manner or otherwise engaged in arbitrary or discriminatory or bad-faith conduct in this case. See *Teamsters Local 307 (Jelco, Inc.)*, 238 NLRB 1450 (1978); *Asbestos Workers Local 17 (Catalytic, Inc.)*, 264 NLRB 735 (1982); *Vaca v. Sipes*, 386 U.S. 171 (1967).

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the United States Postal Service pursuant to Section 1209(a) of the Postal Reorganization Act.

2. The National Rural Letter Carriers Association is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent, National Rural Letter Carriers Association did not violate Section 8(b)(1)(A) of the Act by failing to represent Jackie Donney in her grievance against the United States Postal Service, Slidell, Louisiana.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

ORDER

The complaint is hereby dismissed in its entirety.

² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.